TELEPHONE UTILITY (ATU); GCI; INTERIOR TELEPHONE COMPANY/BRISTOL BAY TELEPHONE COOPERATIVE (ITC/BBTC); MCI Telecommunications Corp. (MCI); TELEPHONE UTILITIES OF ALASKA, INC./TELEPHONE UTILITIES OF THE NORTHLAND, INC. (TUA/TUNI); UNITED UTILITIES, INC. (UUI); and by numerous consumers. Workshops were held on April 19, 1990, and May 8, 1990. The public hearing convened June 5, 1990, and continued through June 8, 1990. Post-hearing comments were also filed by Alascom, GCI, MCI, and TUA/TUNI.

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Discussion

The Commission has analyzed the comments and testimony presented in this proceeding. Additionally, the Commission has carefully considered the legislation mandating intrastate interexchange telephone competition, CSSB 206 (State Affairs) ("SB 206"), which was passed by the Legislature in May, 1990; signed by the Governor in June, 1990 (Ch. 93 SLA 1990); and codified as AS 42.05.800 — 42.05.995. After consideration of the record, based on its own expertise and in light of the new statutory framework, the Commission has concluded that most aspects of the proposed regulations are appropriate and should be adopted. At the same time, some modifications to the proposed regulations and amendments to the Manual are justified as more particularly discussed *infra*.

A. *Modifications to Proposed 3 AAC 52.350 — 3 AAC 52.399*

1. *3 AAC 52.355*:

One of the most contested and debated issues which has arisen in the course of defining Alaska's intrastate interexchange marketplace is the extent to which facilities-based competition should be allowed. As originally proposed, the regulations listed 27 so-called "competitive" locations where duplicate facilities could be constructed by competitive interexchange carriers (IXCs). The regulations have been significantly revised to expand the list where facilities-based competition is permitted.[1] In addition, the regulations have been modified to delete the characterization of these locations as "competitive" versus "noncompetitive." This clarification is necessary because all locations in the State are potentially competitive, but some locations may not be served by duplicate intrastate interexchange facilities.

In deciding where facilities-based competition would be allowed, the Commission was guided by legislative findings at AS 42.05.800(2) that facilities-based long distance telephone service should be provided competitively whenever possible and by the provisions of AS 42.05.840(c) that installation of facilities could be prohibited only if the Commission determines that it is not in the public interest. The Commission is persuaded that the list of locations where facilities-based competition is allowed not only fully complies with applicable statutory standards but also provides the broadest possible opportunity for facilities-based competition reasonably supportable within this market-place at this time. Traffic between the locations where the construction of duplicate facilities will be permitted accounts for approximately 80 percent of all intrastate interexchange traffic. These locations also include in excess of 90 percent of the total number of access lines in the state. Over 200 communities account for the remaining traffic and access lines.

Thus, the Commission finds that it would not be in the public interest to remove all restrictions on construction of duplicate facilities or to otherwise expand further the list of locations where facilities-based competition is allowed beyond those set out in the revised proposed regulations. There are several reasons for this conclusion.

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First, there are significant differences in cost per channel between routes of high density traffic and routes of low density in these regulations already include many locations considerably smaller than those served by duplicate facilities in the rest of the nation. The list encompasses most communities in Alaska with a population greater than 1,000, and some that are even smaller. No party contested the testimony of BJA that, in the lower 48 states, very few competitive carriers have installed facilities in communities of less than 20,000 people. Rather, the prevailing norm is that there are no redundant facilities in rural areas, and competitors serve those areas by leasing facilities on the network which is owned by local exchange telephone companies (LECs) who provide both local and the functional equivalent of intrastate interexchange service.

Further, certain aspects of GCI's planned network involve technologies unproven in Alaska or elsewhere. While it is both desirable and appropriate to allow an opportunity for new technologies to be introduced into the marketplace, it is not acceptable to unduly risk universal service or the financial integrity of the incumbent carrier in the interest of potentially speculative technological development. The locations where facilities-based duplication will be permitted, together with the experiment discussed *infra*, provide a reasonable opportunity to test new technology and to transition the marketplace into the competitive areas while minimizing any adverse consequences. Thus, for the foregoing reasons, it is not in the public interest to risk the almost certainty of significantly greater costs imposed on the existing carrier in the hopes of a new entrant being able to provide service at lesser costs.

A third reason for the Commission's decision is that GCI's proposal to eliminate all barriers to construction of duplicate facilities creates other significant risks. BJA has testified that of the 200 or more locations where facilities-based competition is prohibited, there are a few that may be a "little bit profitable" but "virtually all of them will be unprofitable." (Tr., June 8, 1990, p. 81.) GCI also has conceded that not all areas of the state are profitable and has acknowledged that its willingness to construct facilities to serve statewide is in large part motivated by its interest in carrying American Telephone & Telegraph Company's (AT&T) northbound traffic and in terminating the current joint services agreement (JSA) between Alascom and AT&T. While currently under review, the JSA represents the existing policies of the Federal Communications Commission (FCC) which have evolved with particular attention and concern for the provision of affordable service to rural areas of the state. The net result of this arrangement, together with associated cost separations factors, has been a flow of support to Alascom that has enabled much of the cost of joint interstate/ intrastate toll facilities to be paid for by funds not generated in Alaska. In addition, AT&T estimates that over $80 million in excess of interstate message toll revenues from calls to and from Alaska are paid to Alascom to support Alaska telecommunications services. All Alaskans have been the beneficiaries of this arrangement. In addition, all Alaskans have profited from a national toll structure whereby toll calls between Alaska and the other states are priced the same as like toll calls in the Lower 48. A decision to eliminate all barriers to entry with the results desired by GCI could have significant financial consequences for the state. It is not in the public interest to risk losing that support in the hopes of a new entrant being able to use an unproven technology to provide service at a cost that will more than make up for the loss of millions of dollars of support. The FCC's approach to Alaska is based on long-standing policies well-grounded in the economic and technological realities of providing service throughout Alaska. It would be imprudent to undermine those policies or universal service without an equally well-grounded assessment of the economic and operational results of facilities-based competition in those segments of the market where it will be allowed under the regulations.

[2] In summary, the Commission finds that the costs associated with construction of facilities in locations where less than 20 to 25 channels are needed to provide service, plus the other risks associated with a policy of total open entry to facilities-based competition, dictate a finding that limitations on such entry is in the public interest. Accordingly, facilities-based competition should not be allowed outside of

the locations listed in the revised regulations. It should be emphasized, however, that the absence of duplicate facilities in the other areas does not mean that there will be no competition in the intrastate interexchange market in those areas. Competition through resale is still permitted, and encouraged, in all such areas.

As previously stated, the Commission also observes that among the locations where duplicate facilities may be constructed are many rural locations. By constructing facilities in these locations, GCI will have an opportunity to demonstrate the cost and quality of the technologies it proposes.

Furthermore, the Commission has determined that it would be appropriate to allow an IXC to file an application to construct its own facilities on an experimental basis in a maximum of 10 additional locations. Such an application may be filed by any IXC and, upon approval, will give the carrier an opportunity to demonstrate the technical and economic feasibility of providing facilities-based competitive service in more remote areas of Alaska.

[3] The Commission has also determined that it would be appropriate to modify somewhat the extent of the prohibition against the use of duplicate transmission facilities in completing certain calls. As previously proposed, 3 AAC 52.355(e) prohibited an IXC other than Alascom from using its own transmission facilities on any call which either originated or terminated in a "noncompetitive" location. Thus, if a call originated in Anchorage and terminated in a noncompetitive location outside of Fairbanks, such as Manley, a carrier other than Alascom would not have been able to use its own facilities to transmit the call from Anchorage to Fairbanks and then resell Alascom's services between Fairbanks and Manley. Instead, the carrier would have had to resell Alascom's services for the entire call, Anchorage to Manley. The Commission has determined that this restriction is inappropriate, particularly in view of the expanded list of locations where duplicate facilities may be constructed.

Accordingly, the Commission has rewritten proposed 3 AAC 52.355 to accomplish the foregoing changes. Rather than defining locations as "competitive" and "noncompetitive," the rewritten regulation simply specifies those locations where the construction of duplicate facilities is permitted and provides that only those facilities can be used in the provision of intrastate interexchange service.

The Commission has also determined that a more precise explanation of "location" should be a part of the proposed regulations in order to prevent confusion about boundaries for the locations where duplicate facilities may be constructed. This confusion exists because, for example, the regulations as previously written included Girdwood, Hope, and Portage, as well as Anchorage, even though all of these locations (plus Indian) are served by the same host central office switch in Anchorage. On the other hand, Ninilchik was not included in the list, even though it is served by the host central office switch in Soldotna, which was included. In order to resolve these ambiguities, 3 AAC 52.355(a)(1) has been modified to provide that duplicate facilities may be constructed in locations where customers are either directly connected to a central office in the location listed or served through a remote unit connected to a central office in the location listed. Thus, Girdwood, Hope, Indian, and Portage, are not listed separately but are included within "Anchorage." In addition, Elmendorf Air Force Base and Fort Richardson are omitted because they are in the Anchorage calling area. The Commission seeks further comments on this approach to the specification of "locations" to be certain that the definition is accurate and unambiguous.

2. *3 AAC 52.399(3) and (8) [New 3 AAC 52.399 (2) and (7)]; New 3 AAC 52.399(4); New 3 AAC 52.363:*

[4] Another issue about which there was significant disagreement in this proceeding was whether the regulations should include a distinction between "dominant" and "nondominant" IXCs, and, if so, what differences in regulatory treatment would apply to dominant and nondominant IXCs. The arguments presented were in large part linked to the merits and extent of possible deregulation of Alascom. It is apparent from the debate that one IXC's handicap is another IXC's equalizer and vice-versa. As a

result, the Commission has adopted a regulatory scheme which attempts to balance these interests by retaining traditional regulatory oversight of Alascom in some areas and allowing regulatory flexibility in others. Other IXCs would essentially be deregulated, at least initially. This approach is common in the industry and allows for a measured transition into a fully competitive market as well as a reasoned evolution of regulatory policies.

As a logical outgrowth of this regulatory scheme, the Commission has determined that a distinction between dominant and nondominant IXCs should be retained but that "dominant carrier" now should be defined as any IXC determined to have market power. Previously, the definition referred to the entity, or its successor, certificated in Docket U-69-24 to provide intrastate interexchange telecommunications service, which currently is Alascom. (3 AAC 52.399(3); new 3 AAC 52.399(2).) The new description allows for one or more IXCs to be designated as dominant. The definition of nondominant carrier is unchanged. (3 AAC 52.399(8); new 3 AAC 52.399(7).) An additional category has been added for "incumbent carrier" which uses the prior definition of dominant carrier and applies to Alascom. (New 3 AAC 52.399(4).)

The regulations also have been expanded to include a mechanism for determining whether or not an IXC has market power and whether it should be designated dominant or nondominant. (New 3 AAC 52.363.) The Commission has already received and considered comments concerning the definition of market power but, given the body of knowledge and law on the subject, is not currently predisposed to set forth a definition in the regulations. However, the Commission will allow additional comments on whether or not market power should be defined in the regulations for the Alaska intrastate interexchange market in particular and, if so, how.

The Commission has also determined that, at this time, Alascom has market power and should be designated as a dominant carrier. Alascom is currently the only certificated intrastate IXC and is likely to continue as the monopoly IXC to some locations; it is the only carrier which has, or is authorized to build, facilities throughout the State; it handles the vast majority of the interstate traffic of AT&T originating or terminating in Alaska; it is part of a large, integrated corporate family with considerable financial and operational strength; and its parent corporation wholly owns two LECs and partially owns one LEC in Alaska. Each of these factors distinguishes Alascom from new entrants, and, cumulatively, they give Alascom market power such that it should be designated dominant at this time.

At the same time, the Commission recognizes that GCI, as well as other IXCs, have an opportunity from the inception of intrastate interexchange competition to secure a larger percentage share of the marketplace than similarly-situated competitors have been able to capture in other parts of the country. This suggests a need for monitoring the initial designations of IXCs and making changes as appropriate, which the Commission fully intends to do.

3. *3 AAC 52.370; 3 AAC 52.375:*

[5] While it has determined that Alascom is a dominant IXC, the Commission does not intend the designation to be used to inhibit Alascom's ability to compete against new entrants. Within certain bounds, the Commission will allow Alascom to engage in competition, including price competition, without incurring regulatory roadblocks. In that regard, the Commission has established the same notice periods and requirements for filing new retail tariffs and special contracts for both dominant and nondominant IXCs. (3 AAC 52.370(b) and (c).) This contrasts with the regulations as initially proposed which incorporated some differences in noticing procedures and timetables. Only for rate increases do the regulations now establish different filing requirements for dominant and nondominant IXCs. It is appropriate that rate increase requests by dominant IXCs, which are carriers with market power, be fully reviewed in order to protect consumers from price increases based on that market power. On the other hand, nondominant IXCs will generally be forced, by market conditions, to charge

no more than the dominant IXC, and, even if a nondominant IXC did charge more than the dominant IXC, consumers could choose the dominant IXC. Therefore, absent evidence of abuse, there is no need to institutionalize rate regulation of nondominant IXCs, even for rate increases.

For both dominant and nondominant IXCs, the Commission retains the right to reject rates which exceed permissible bounds. At this time, the Commission has not tried to define those bounds precisely, but rates which are not just and reasonable or which grant an unreasonable preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage are unlawful and clearly outside acceptable bounds. In addition, the Commission's expectation regarding rate changes in a competitive environment is that rates will remain geographically averaged; that rates will not increase to any consumers; and that predatory pricing will not be practiced. As long as those parameters are observed, the Commission will not be likely to disapprove any rates which are filed.

[6] Even though rates for new or repackaged services, or rate reductions, will normally be allowed to go into effect without prior Commission approval and without the suspension and investigation which have been normal Commission practices in the past, IXCs will be required to maintain just and reasonable rates and must be prepared to support the reasonableness of their rates when so required by the Commission. While recognizing that effective competition may be constrained without pricing flexibility to provide a "level playing field," the Commission has stopped short of allowing total pricing flexibility for the dominant IXC and, furthermore, has rejected Alascom's proposal to cap its rates at current levels in return for pricing flexibility equal to that of nondominant IXCs and for abandonment of the weighting scheme discussed in further detail below.

The Commission has rejected the proposal as premature at this stage because it has many unanswered questions concerning the proposed price cap and does not believe that they can be sufficiently answered in the time frame allowed to develop and implement rules governing intrastate interexchange competition. Further, given that the telephone industry is generally characterized by declining costs and Alascom's level of rates is under investigation after two large rate decreases in the past year, the Commission is not persuaded that a price cap proposal such as put forward by Alascom would provide sufficient assurance that current rates are just and reasonable at this time and would remain so in the future. As the Commission gains more understanding of the emerging competitive market structure and completes its investigation of Alascom's rates, it may again consider Alascom's price cap proposal.

The Commission recognizes that the ground rules for, and implications of, the rate flexibility allowed herein have not been defined with the same level of specificity as some of the other facets of intrastate interexchange competition. This is a function of both the record in this proceeding and the Commission's limited previous exposure to competitive ratemaking. Therefore, the Commission intends to vigorously monitor the regulatory framework established under the regulations and to make modifications as experience dictates.

4. *3 AAC 52.370(a)*:

[7] With regard to the requirement that rates be geographically averaged, the Commission has adopted the suggestion of GCI that language be added requiring that the rate for each mileage band be equal to or greater than the next shorter band. The Commission has also added the requirement that all IXCs must structure rates with the same time-of-day rating periods and the same mileage bands as Alascom.[3] This requirement does not mean that the time-of-day discounts must be the same as Alascom's or that rates must increase, through mileage bands, in the same proportion or amount as Alascom's. Instead, the requirement is only that the rates be structured with the same periods and bands. This is desirable for two important reasons. First, comparable mileage bands and time-of-day periods will allow consumers to make direct price comparisons between IXCs. Second, use of the same periods

and bands by all IXCs will reduce problems and complexities associated with implementation of weights for minutes of use, as discussed further below.

5. 3 AAC 52.375(a):

The Commission has determined that the restriction on resale of "nonmetered" services which was included in the previous proposal should be deleted for two reasons. First, the Commission believes that unrestricted resale will lead to a more competitive and efficient market with greater price discipline. Second, the initial restriction on resale of unmetered services was intended to simplify reporting and calculation of weighted access minutes for access charge purposes, but those matters can be addressed in other ways, as discussed below.

6. 3 AAC 52.360(a):

The Commission has modified portions of the requirements for information which must be filed with an application for public convenience and necessity. Paragraphs (8) and (9) of 3 AAC 52.360(a) have been rewritten to narrow the scope of information which must be filed. As revised, they request lists of all administrative and judicial proceedings involving the operational, legal, or financial integrity of the applicant, its officers, directors, or affiliates. Paragraph (21) has been added to require a verification of the truth and accuracy of the application. The Commission has determined that the other application requirements are necessary in order to determine, on an expedited basis, whether an applicant is fit, willing, and able to provide service, and those filing requirements are, therefore, retained as necessary and appropriate.

7. 3 AAC 52.360(d) [New 3 AAC 52.350(d)]:

[8] The Commission has also eliminated the provision in the regulations which stated that no certificate to provide intrastate interexchange telecommunications service will be issued to an LEC. (3 AAC 52.360(d).) The intent of that section was that an LEC not be allowed to obtain a certificate pursuant to these particular regulations. The reason for that restriction is that there are significant issues regarding certification of LECs to provide interexchange service which could not be resolved in the ninety-day period allowed for the consideration of applications under these regulations. As previously written, however, the section was interpreted as a complete ban on certification of LECs. Therefore, a new section has been added at 3 AAC 52.350(d) to clarify that LECs can apply, pursuant to standard application procedures, for a certificate to provide intrastate interexchange service.

Any LEC applying for a certificate to provide intrastate interexchange telecommunications service must address the Commission's concerns regarding the protection of existing local ratepayers, the avoidance of cross-subsidization, and the maintenance of a level playing field for all IXCs. Thus, the LEC must satisfy the Commission that there will be no cross-subsidization between toll and local services or between regulated or nonregulated services; that local rates and ratepayers are sufficiently insulated from the risk of operating losses that might occur in a competitive market; that management time, skill, and resources are sufficient to take on the additional concerns of entering a new market while still devoting a high level of attention to the provision of local service and interexchange access service; that the LEC will not have an unfair advantage over other IXCs in the provision of equal access, access charge structure, billing arrangements, area served, or selection of IXC; that the LEC will comply with all applicable regulations governing interexchange service; and that any other issues raised by the Commission during the application process are addressed satisfactorily. Beyond these concerns, the Commission has not yet considered specific LEC filing and certification requirements. It is the Commission's ultimate objective to develop rules which will govern LEC entry into the intrastate interexchange market. In the interim applications will be processed on a case by case basis as described herein.

8. *3 AAC 52.380*:

[9] As discussed in detail in Part B of this Order, the Commission has determined that the access minutes used to allocate the access charge bulk bill among IXCs should be weighted. In Order R-87-1(11), the Commission adopted bulk billing for the recovery of LECs' nontraffic sensitive (NTS) costs largely to reduce the risk to LEC revenue streams which would accompany the transition from settlements to access charges. The weighting system adopted herein does not affect the computation, amount, or disbursement of the bulk bill for NTS costs and also does not affect the amount and recovery of traffic sensitive costs. Rather, the weighting of access minutes is no more than a refinement of the previously approved approach to allocating payment for the bulk bill among competing IXCs, i.e. from unweighted access minutes to weighted access minutes.

While the details of the calculation of access minutes are set forth in the Manual, the existing provision of the proposed regulations has been changed in two significant respects. First, the data that is required to be provided has been expanded to recognize that there is no longer a prohibition on resale of nonmetered services and that such services will be factored into the bulk bill allocation process by establishing surrogate access minutes for these services. Second, there has been a decoupling of the locations which are used in the weighting scheme and those where facilities-based competition is permitted. For clarification purposes the locations used for weighting the bulk bill allocation now are divided and denominated as high density and low density, rather than competitive and noncompetitive.

In order to administer and monitor the bulk billing system as refined herein, the reporting of sales and purchases of both switched access minutes and private lines by all IXCs is necessary. This data is necessary for the computation of actual and surrogate access minutes. The reporting requirements also will enable a "cross check" between IXCs for minutes and private lines sold, or purchased, for resale. Further, the Commission has adopted new provisions that require retention of the billing records from which access minutes are obtained and that allow for auditing of access minutes data. An independent audit of this data will be performed if authorized by the Commission. The cost of the audit will be borne by the petitioning IXC, unless the audit determines that the access minutes reported are inaccurate by a margin of greater than 2 percent per year or a margin which resulted in access charge underpayments of $200,000 or more per year in which case the cost is paid by the audited IXC. In addition, the regulations provide that any IXC which is determined to have underpaid access charges will be required to correct that underpayment in accordance with the tariff of the Alaska Exchange Carriers Association. The Commission recognizes that any tolerance margin is judgmental and seeks additional comments regarding both the auditing and monitoring procedures and the error tolerance discussed above.

The Commission has also determined that the computation and reporting of the access minutes used for the bulk bill allocation should be the responsibility of IXCs. At the public hearing, TUA/TUNI argued that these functions should be done by LECs since they were selling the access service. The Commission is not persuaded by that argument. The access minutes recorded and reported under 3 AAC 52.380 are used only to allocate the bulk billing of NTS costs among IXCs. The LECs will receive the same amount of NTS cost recovery, regardless of which IXC pays. It is the IXCs who are most affected by the allocation of the bulk bill, and it is appropriate that they be the ones to record and report the access minutes used for allocating the bulk bill. Also, the Commission expects that there is some burden and cost associated with recording and reporting these access minutes and believes that this burden and cost is most appropriately borne directly by the IXCs. The Commission also believes that the reporting and monitoring requirements will provide sufficient protection for both LECs and IXCs.

As provided at 3 AAC 52.380(c), the Commission has determined that the data required by 3 AAC 52.380(a) will be public information. The Commission recognizes that some IXCs may prefer to keep that data proprietary.

However, the Commission is convinced that if all IXCs are required to provide the same information, there will be less likelihood of prejudice to any IXC. In addition, the information which the Commission is requiring be made public is, for the most part, an aggregation of all access minutes within mileage bands and not route-by-route data which may be more competitively sensitive. Public access to the information is in the public interest for at least three reasons. First, by being able to review the information of an IXC, LECs and other IXCs will be able to help identify inaccurate reporting. Second, an up-front determination that this data is public will eliminate arguments regarding its release as well as the need to dedicate Commission and carrier resources to resolving such disputes. Third, full information regarding the intrastate interexchange market will enable both consumers and competitors to make decisions which will contribute towards a market which is truly competitive.

9. *3 AAC 52.390(a)*:

[10] Section 3 AAC 52.390(a) has been modified to add additional provisions to the list of the Commission's other regulations which will be waived for nondominant carriers. Specifically, nondominant IXCs are exempted from requirements regarding the filing of billing and contract forms (3 AAC 48.230), the filing of supporting information for rate changes (3 AAC 48.275), use of the Uniform System of Accounts (3 AAC 48.277), and application of the Separations Manual for jurisdictional cost separations (3 AAC 48.430). Application of those regulations to nondominant IXCs is unnecessary in a competitive market. For dominant IXCs, the filing of supporting information in accordance with 3 AAC 48.275(a) is waived for new services, repackaging of existing services, and rate decreases but is retained for rate increases.

B. *Modifications to Proposed Manual Amendments*

The Commission has decided to adopt a system for weighting access minutes to define IXC market shares for the purpose of allocating the bulk bill component of access charges. The Commission has further determined that access minutes should be weighted based on their time of day, calling distance, and status as high density or low density.

With regard to high density/low density weighting, the Commission is convinced that the introduction of competition in the provision of intrastate interexchange service presents risks to the price and quality of service to rural areas of Alaska where traffic densities are low and the cost of providing service is high. These risks have been thoroughly documented to the Commission both in this proceeding and in prior proceedings, including the investigation of Alascom's rate design and in conjunction with prior proposals of GCI to allow competition in the provision of interexchange telecommunications service. The risks have also been recognized by the Legislature, which authorized the Commission to establish a "mechanism to be used to ensure the provision of long distance telephone service at reasonable rates throughout the state and to otherwise preserve universal service." (AS 42.05.840.)

The system of weighting access minutes for bulk bill allocation purposes is designed to minimize the foregoing risks. Weighting of bulk bill access charges partially levelizes the profitability of urban and rural toll routes. By maintaining profitability on low density, high cost rural routes, IXCs have an incentive to provide service to those routes. Alascom, as the present provider of service to all such routes, will be able to continue to profit from those routes, reducing incentives for it to raise prices or lower quality for those routes. In these respects, the Commission is firmly convinced that the system for weighting bulk bill access charges is in the public interest. Furthermore, the weighting system protects universal service throughout the state without requiring payments between competing IXCs. Such payments were a feature of the regulations previously proposed by GCI and were one of the reasons those regulations were rejected.

The Commission is also convinced that

weighting by calling distance and time of day serves the public interest by helping to maintain universal service while allowing the benefits that arise from competition to be available to all Alaskans. Distance weighting provides an essential tool to deal with the disparity between costs and value for calls of varying distance. In Alascom's previous rate design case, the Commission determined that a rate structure in which rates increase with distance is beneficial to Alaskans statewide even if costs do not increase with distance as much as the rates. That reasoning has not changed. The Commission perceives that if it did not maintain the ability to weight by calling distance, competitive forces might exert considerable pressure to deaverage toll rates and ultimately cause rates to become significantly less distance sensitive. The resultant rise in short haul rates could have unacceptable consequences particularly in rural Alaska where many remote locations are served by regional centers at short haul rates and residents of those communities rely on the regional centers for vital health, welfare, and educational services.

By maintaining the time-of-day element of weighting, the benefits of competition will be enjoyed by residential customers, who tend to make a greater portion of calls in off-peak periods, as well as by business customers. Furthermore, weighting by time of day reflects the underlying economic and engineering facts that usage is low in off-peak hours and increased calling in those hours adds little to overall costs.

The primary arguments against the system of weighting are that it will promote bypass, that it is administratively complex, and that it may not be legal. The Commission is not convinced by those arguments. Bypass is presented as a risk in virtually all telecommunications policy decisions, but it has never been demonstrated to the Commission to be a significant problem. The Commission believes that whatever bypass potential may exist has largely been realized and recognizes that such bypass frequently takes the form of customers switching from message telephone to private line service. So-called economic bypass is a manifestation of a logically and appropriately functioning marketplace. While there continue to be large users on the Alascom network, there is no evidence to demonstrate that their calling patterns are amenable to either facilities or service bypass. The Commission further notes that the system of bulk billing of NTS costs, especially as modified to incorporate surrogate access charges in the allocation, provides a deterrent to bypass. In addition, there is no reason that weighted bulk bill access charges, coupled with competition, will lead to price increases to customers, so those customers should have no increased incentive to bypass.

The Commission certainly recognizes that the weighting system involves some administrative complexity. MCI, a potential entrant, argued that the weighting system is so complex as to discourage entry either because the system will be difficult for potential market entrants to set up or because they will refrain from entry due to fear that the Commission may modify the weights once they have entered the market. The argument is also made that increased barriers to entry will make for a less perfect market and that the benefits of competition in the form of lower prices will be lost. However, the Commission is convinced that the system is manageable and that claims of complexity were largely overstated. Furthermore, the Commission also firmly believes that the benefits of weighted bulk bill access charges outweigh the complexities.

Finally, arguments have been raised that the weighting system may be illegal because the weighting allegedly results in explicit cost subsidies based on undue discrimination or because the access charge allocation represents a tax collected and distributed in violation of Alaska's Constitution. The Commission is not persuaded by these arguments. SB 206 specifically provides that the Commission should establish access charges and may require "pooling of exchange access costs and revenues if necessary to achieve the purposes of AS 42.05.800 — 42.05.995." (AS 42.05.850.) Furthermore, the legislation also authorizes the Commission to establish a "mechanism to be used to ensure the provision of long distance telephone service at reasonable rates throughout the state and to otherwise preserve universal service." (AS 42.05.840.) The system adopted by the Commission is specifically designed to ensure the provision of long distance telephone service at reasonable rates throughout the state, and the system is implemented as part of the pooling of access charge costs and revenues. Thus, the Commission finds that a system such as that adopted herein was specifically authorized by the Legislature. Any arguments regarding the constitutionality or other illegality of the legislation must be resolved by the Courts, not by the Commission.

Based on the foregoing, the Commission has determined that the Manual should be amended to provide for the weighting of access minutes for allocation of the bulk bill. However, several modifications to the amendments previously proposed are appropriate. Section 200 should be modified to provide that weights will be based on time of day, calling distance, and high density or low density status, rather than time of day, calling distance, and competitive or noncompetitive status. Also, the definitions of "competitive minutes" and "noncompetitive minutes" should be eliminated and replaced by definitions of "high density minutes," "low density minutes," and "high density locations," as follows:

> "*high density locations*" means Anchorage, Chugiak, Eagle River, Fairbanks, Homer, Juneau, Kenai, North Pole, Palmer, Seward, Soldotna, Wasilla, and Willow;
>
> "*high density minutes*" means actual or surrogate access minutes which both originate and terminate locations defined as high density;
>
> "*low density minutes*" means actual or surrogate access minutes which either originate or terminate in a location which is not defined as high density.

The Commission has also determined that a portion of the bulk bill should be assessed in connection with sales of switched and nonswitched private lines. Inclusion of private lines in the calculation of the bulk bill will provide further protection against any incentive IXCs might have to promote bypass because of the weighted bulk bill access charge system. In order to include private lines in the bulk bill calculation, the Commission has determined that nonswitched private lines should be assigned surrogate access minutes of 1000 per month per voice-equivalent private line circuit and that nonswitched T-1 private lines of 24 voice-equivalent channels should be assigned surrogate access minutes of 500 per voice equipment channel per month.[4] This is accomplished by adding Subsection 105(e), as follows:

> (e) In the determination of proportionate market share pursuant to (c) of this section, each interexchange carrier's access minutes will include the following surrogate access minutes:
>
> (1) for nonswitched private lines, 1000 minutes per month per voice-equivalent private line circuit and
>
> (2) for nonswitched T-1 private lines of 24 voice-equivalent channels, 500 minutes per month per voice-equivalent channel.

The private line access minute surrogates delineated above are limited to those which have been discussed in this proceeding to date. The Commission invites comments on the adequacy of its proposed surrogates for private line services and recommendations for any additions, so that private line surrogates are complimentary with the proposed Alaska Exchange Carriers Association Tariff.

C. *Other*

Another issue which received significant discussion in comments and at the public hearing concerns intrastate equal access and dialing requirements. There was nearly unanimous agreement that the most desirable dialing arrangement is that known as "2-PIC" dialing. With this dialing, consumers are able to presubscribe to different IXCs for intrastate and interstate toll service and, in each instance, to reach the correct IXC by dialing only the digit "1." There was also general agreement that, with such dialing, no "presubscription balloting" would be necessary, at least not in areas where balloting had already occurred for interstate purposes. Instead, each customer would remain with its existing IXC until that customer made a decision to change. The only significant problem with 2-PIC dialing is that the technology needed to implement such dialing is not now available on the market. There are, however, indications that it could be available by the time intrastate interexchange competition is introduced in Alaska, or shortly thereafter, at least for some switches, either through vendor development or through procedures developed internally by the telephone industry in Alaska.[5]

[11] The Commission agrees that 2-PIC dialing is the preferable dialing arrangement and that it should be implemented before competition begins or as soon thereafter as feasible. The Commission encourages Alascom, LECs, Staff, and prospective market entrants to work together toward implementation of the system. The Commission seeks comments on how best to achieve a workable 2-PIC dialing plan given the decision made herein and the results to date of tests conducted by TUA/TUNI.

In the event that 2-PIC dialing cannot be implemented with the advent of competition, another interim arrangement will be necessary. The Commission has determined that, at a minimum, any interim arrangement must treat all IXCs equally and must not involve consumers being automatically assigned to their interstate IXC for intrastate purposes. One arrangement which meets these criteria is "1-0-XXX" dialing, and the Commission will require that arrangement if 2-PIC dialing is not possible by the time competition is implemented.

The Commission has also determined that it is desirable to require written authorization from customers before their assigned IXC is changed. Written authorization will prevent potential abuse by any unscrupulous IXCs which may enter the market, and the Commission does not believe that the requirement of written authorization will be a burden in marketing. An appropriate form can be mailed to any customer who orally, or telephonically, requests a change, and the change can be made as soon as the form is returned by mail. The Commission may also require LECs to periodically include in bills to consumers a notice explaining the possibility of selecting a different IXC and to include a form for change or an easy way for the customer to request a form.

The issues of 2-PIC dialing, written authorizations for change, and periodic notifications of options are not addressed in the regulations now under consideration. However, the Commission will issue proposed regulations on those matters in the future.

D. *Conclusion*

The foregoing decisions represent the Commission's best collective judgment on the appropriate market structure to accommodate the introduction of competition in intrastate interexchange telecommunications service. The decisions have been reached after thorough consideration of the issues and the record in this proceeding and based on the expertise of the Commission. The Commission is aware that some of these measures may be temporary and required only during the period of transition to a more competitive market structure. The Commission will monitor the progress of intrastate interexchange competition and will amend or modify these regulations as circumstances require.

Before final adoption of the regulations and manual amendments, the Commission will allow a final comment period of 30 days. However, comments which have already been made should not be repeated. Instead, comments should be limited to new matters. While the Commission is certain that no interested person is entirely satisfied with all aspects of these decisions, the Commission encourages all parties not to continue to relitigate these issues but, instead, to move forward to the remaining issues which must be resolved in the near future.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The proposed regulations and amendments to the Alaska Interexchange Intrastate Access Charge Manual, attached hereto as Appendix A and B, respectively, are issued for final public comment.

2. By 4 p.m., October 15, 1990, interested persons may file with the Commission final comments on the proposed regulations and amendments appended to this Order.

DATED AND EFFECTIVE at Anchorage, Alaska, this 6th day of September, 1990.

DISSENTING STATEMENT OF COMMISSIONER SOKOLOV, WITH WHOM COMMISSIONER O'TIERNEY CONCURS, WITH RESPECT TO THE INCLUSION OF TIME-OF-DAY AND DISTANCE FACTORS IN THE ACCESS CHARGES WEIGHTING SCHEME

[1] I respectfully disagree with my colleagues in adopting an access charge weighting scheme that includes distance and time-of-day weighting.

Before the Commission is the challenge of developing a scheme that will preserve universal service and at the same time foster a competitive environment governed by market forces. To achieve this, the regulator must strike a delicate balance between imposing constraints on telephone companies that are sufficiently restrictive so as not to jeopardize universal service yet sufficiently relaxed to permit market forces to work as freely as possible. Once competition begins, undesirable market repercussions may well occur; and the regulator must stand ready to make adjustments quickly before much damage is done. To be able to react quickly, it is essential that regulatory mechanisms be kept as simple as possible.

If competitors are allowed to operate without any constraints whatsoever, it is highly probable that service to rural communities would decline. Utility resources and management attention would be directed to areas where there is the greatest potential for profits; i.e., the urban areas. I thus fully support an access charge weighting scheme that encourages service to small rural communities. This would require two or, at most, three different weightings. Beyond this, if additional factors are added to the weighting scheme, the point of diminishing returns is quickly reached.

The addition of distance and time-of-day factors to the weighting scheme has several disadvantages. One, a complex weighting scheme will make it more difficult to make necessary adjustments. Should the market react unexpectedly, how easy will it be to identify the variable that will need adjusting? If the 72 different weightings that were discussed at the hearings were adopted, it may just take too long to fine tune them to achieve the desired market equilibrium. Furthermore, should it be desirable to use three levels of weightings to differentiate between high and low-density routes, the number of different weightings might jump to 108!

Second, while major carriers may submit the required data with reasonable precision, smaller carriers and resellers may not. As the number of carriers increases, so do the sets of 72 different demand data. Verification of all this data may become an overwhelming auditing task.

Third, the Alaskan market is very limited in size, and it is important to allow as many competitors into the market as possible to minimize oligopolistic behavior. It is, therefore, important to reduce to an absolute minimum the barriers for market entry. The weighting mechanism that was adopted requires long distance carriers to submit demand data that, according to MCI, is much more detailed than that required by any of the other state commissions. I am concerned that some potential competitors may choose not to enter the Alaskan market so as not to set a precedent for submitting detailed demand data to state commissions.

Fourth, regulations that prevent the market from finding its own natural level should be kept to an absolute minimum. While it is critical that a mechanism exist to preserve universal service, it is much more debatable whether other cross-subsidies should be encouraged in an open market. In the long run, customers do find alternatives if rates are substantially above costs. To confirm this, one need to look no further than the growth of the State network in recent years. The threat of bypass may be not as severe as touted by Alascom; nevertheless, it does exist, and it is likely to increase in the future because of new technologies and competition from noncommon carrier providers. Once customers are lost to bypass, it is almost impossible to bring them back onto the network.

Only time will tell if a weighting scheme alone will suffice to achieve the desired objective of preserving universal service. Perhaps, additional regulatory constraints will have to be tried to counteract market reactions that may threaten universal service. However, the decision has been made to have a competitive intrastate long distance market, and for it to develop successfully and offer customers more diverse and less costly services, regulatory intrusion should be kept to a minimum.

DATED at Anchorage, Alaska, this 6th day of September, 1990.

Peter Sokolov
Chairman
Daniel Patrick O'Tierney
Commissioner

DISSENTING STATEMENT OF COMMISSIONER SOKOLOV WITH RESPECT TO EXCLUSION OF NONDOMINANT CARRIERS FROM QUALITY-OF-SERVICE STANDARDS

[II] I find it inconsistent that nondominant carriers would be required to file tariffs with the Commission without simultaneously giving customers some assurance that a reasonable level of quality will be provided for the filed rates. After competition is introduced, it is quite likely that competitors will devote most of their attention to the quality of service they furnish in areas where competitive pressures are highest while neglecting service quality where such pressures are absent. The surveillance levels in the Commission's service standards are minimums and should be easily met by all reliable IXC's. If service standards were adopted, they would assure that customers throughout the State, who will be paying non-discriminatory average rates, would not be discriminated against as to the quality of service they receive.

DATED at Anchorage, Alaska, this 6th day of September, 1990.

Peter Sokolov
Chairman

DISSENTING STATEMENT OF COMMISSIONERS KNOWLES AND FOSTER WITH RESPECT TO THE TECHNICAL DEMONSTRATION PROJECT

[III] We respectfully dissent from that part of the Order which finds it appropriate for an interexchange carrier (IXC), upon application and approval, to construct facilities on an experimental basis in a maximum of 10 communities in addition to those where facilities-based competition is allowed.

A technical demonstration project for the most remote areas of Alaska may well be a good idea, but there is little, if any, basis in the record to support or to oppose it much less to define its scope. Such an experiment should be the subject of comments and full evaluation before it is determined to be appropriate and applications are solicited. While the Order requires Commission approval of proposals, it does not appear to contemplate substantive review of the concept during the application process. If that it is not the case, then it clearly would be preferable to have considered the merits and demerits of a technical demonstration project before addressing these points in the context of an individual application.

In addition, it is premature, if not unnecessary, to invite IXCs to expand their facilities construction at this stage in the development of the intrastate interexchange marketplace. The list of locations where duplicate facilities can be built has been significantly expanded by this Order so that over 90 percent of the state's access lines can be served by competitive facilities-based IXCs. This list also includes a sufficient number of places with low traffic levels to allow for installation of, and actual experience with, new technology. (Tr., June 8, 1990, pp. 83-84.) This operational history is an essential prerequisite to assessing the desirability and focus of any technical demonstration project. Such experience will also allow the Commission to direct any experiment so as to insure that the resulting data not only benefits the private interests of an IXC but also provides information useful to assessing the public interest of expanding the list of locations where facilities-based competition is permitted.

Lastly, with all of the other pressing issues facing the Commission in implementing intrastate interexchange competition in early 1991, it is counterproductive to be distracted by consideration or approval of an experiment for a much more speculative part of this telephone service possible benefits of offering customers a potential choice of lesser quality MTS, a minimum standard which encourages direct competition and ensures reliable dial tone seems more appropriate.

DATED at Anchorage, Alaska, this 6th day of September, 1990.

Mark A. Foster
Commissioner

DISSENTING STATEMENT OF COMMISSIONER MAY, WITH WHOM COMMISSIONER O'TIERNEY JOINS, WITH RESPECT TO LIMIT ON CONSTRUCTION OF DUPLICATE FACILITIES

[v] Although I firmly support the overall framework that the Commission has established to regulate the transition to a more competitive intrastate interexchange market structure, I respectfully dissent with regard to the constraints placed upon the construction of duplicate transmission facilities. For two reasons, I believe that the Commission should not limit the locations where duplicate transmission facilities may be constructed.

First, I do not believe that the record reflects enough accurate and current evidence regarding the inverse relationship between costs per channel and number of channels to justify prohibiting facilities based competition below a specific number of channels. Given the legislative preference expressed in CSSB 206 for facilities-based competition, the Commission should not place limits on the construction of duplicate facilities without more compelling evidence of risk to universal service or other injury to the public.

Second, even if the cost curve for costs per channel does begin to rise steeply at some definite number of channels, I believe that competing carriers should still be given the opportunity to construct duplicate facilities in all locations, because the primary risk of constructing duplicate facilities will be borne by interexchange carriers and not by ratepayers. Once a duplicate facility has been built at a particular location, that cost, at least in theory, becomes a sunk cost and is no longer relevant to pricing strategy on that route. In a competitive market, so long as a carrier recovers its marginal costs, it makes sense to offer service even if sunk costs are not recovered. Ratepayers on those routes ought to benefit from this tendency of market forces to drive prices to marginal costs. While I do not expect actual market behavior to always mimic economic theory, there is sufficient predictive value from theory that I can not completely ignore it.

To the maximum extent possible consistent with its obligation to maintain just and reasonable rates, the Commission should let carriers entering the market decide where and how they will compete and to what extent they will mix profitable and unprofitable routes as they attempt to provide the most attractive total package to ratepayers and investors alike. A carrier may decide to offer service through duplicate facilities even on some unprofitable routes based on marketing considerations, competitive strategy, corporate culture or any number of other reasons logical to entrepreneurs and investors but alien to the minds of regulators. In a competitive or emerging competitive market, entering carriers should be free to make those decisions and to bear the attendant risks. The Commission should not, and indeed ultimately cannot, insulate carriers from the effects of such decisions.

Given the legislature's determination that competition in the intrastate interexchange market is in the public interest, the Commission should let the leaven of competition do its work, rewarding efficient carriers who make good investment decisions and penalizing inefficient carriers who make poor investment decisions. I believe that allowing entering carriers more freedom in their investment decisions would lead to a greater array of choices for consumers without posing undue risks to ratepayers. The freedom to construct duplicate facilities is a part of this environment. In the long run, ratepayers will benefit most where the stimulus of competition is most encouraged.

DATED at Anchorage, Alaska, this 6th day of September, 1990.

Donald F. May
Commissioner
Daniel Patrick O'Tierney
Commissioner

SEPARATE STATEMENT OF COMMISSIONER FOSTER WITH RESPECT TO EFFECTIVE COMPETITION IN THE ALASKAN MARKET

Effective Competition

[vi] There has been a great deal of testimony supporting the notion that "market forces" rather than regulation should be allowed to determine the prices and services offered. The task before the Commission is not to choose between these extremes of economic abstraction, but rather to fashion a market structure that encourages the development of healthy market forces and acknowledges the possibility of market failures.

To economically deregulate the intrastate toll market presumes that market forces will emerge to bring about the efficiencies theoretically possible in a competitive market and that they will be sustained. However, based on the interstate market experience, it is also possible that there may be market failures where the inherent market incentives do not materialize to drive the market price and service toward its most economically efficient within the context of the *entire Alaskan market*. The Legislature and the Commission have effectively defined the Alaskan Message Telephone Service (MTS) market as a statewide market by identifying universal service as a primary goal and stating that the benefits of competition should be shared by all consumers of the state.

For the new market structure to achieve the broad policy goals set by legislation, it must achieve *effective* competition. Effective competition implies, among other things, that prices are driven toward cost.

It is difficult to imagine a market with only GCI and Alascom where effective competition is sustained in view of recent history at the interstate level where the challenger with roughly half of the MTS market has priced its service just under the umbrella set by the incumbent. This "market behavior" does not resemble effective competition as much as it does a shared monopoly.

In a market with declining costs, where firms become more efficient through prudent employment or new technology and operational improvements, effective competition may not be emerging if prices merely follow the leader. On the other hand, to the extent that rates track the underlying declining costs of this industry, the benefits of a competitive market structure will begin to emerge.

New Technology and the Alaskan Market

When analyzing the Alaskan market it becomes clear that a great many intrastate routes have not achieved volume levels that would appreciably diminish the economies of scale of the underlying transmission facilities. Furthermore, across the range of transmission densities present in the Alaskan market, there are a number of crossover points where technologies displace one another as most efficient. For example, though the projected cost curves for C-band appear to be competitive with recent FDMA cost curves at the low-density end of the market, at higher densities the costs for C-band decline toward $5,900 a channel, while FDMA costs eventually decline toward $1,500 a channel. Thus, the overall market may still exhibit economies of scale.

If facilities duplication is permitted, it is likely that a new firm will build facilities if it feels it can take advantage of recent technological advances and deploy those advances in specific "volume niches" where they are more efficient than the existing system.

Despite the risks, the potential challenger will be attracted by the profits of the monopolist and the hope that it can take over the dominant position, or at least establish a profitable coexistence of joint market exploitation of monopoly profits.

The challenger will be eager to spread its fixed costs by engaging in aggressive activity to gain as much market share as possible. GCI has indicated it needs at least one third of the intrastate traffic to make its combined intra and interstate network viable. GCI's representation that it will require a third of the intrastate traffic to make its system viable is indicative of the fact that it is facing a declining cost technology. Unless GCI gets enough traffic, it cannot justify the cost of building the system. Thus it will try to increase volume far enough down the cost curve to get to a point where it is viable. This suggests that it may not be viable for a third facilities-based carrier to enter. Further, with additional market share GCI can increase its own profitability and strategically leave Alascom with reduced market share and higher costs. The key equilibrium point for the MTS market will be when GCI and Alascom have market shares which essentially mirror their respective interstate market shares of roughly 50 percent each. At this point, the question becomes whether GCI or Alascom is willing to aggressively pursue additional cuts in prices to garner market share or seek other ways to increase profitability.

The two firms may continue to cut prices in the scramble to capture market share, with the possibility that substantial losses may ensue if rates are cut to below costs. To the extent that the firms engage in aggressive price cutting and the risks are borne primarily by shareholders, through asset write-offs for example, there are benefits for the consumers in the state. However, the price cutting could result in the decimation of the rivals and the potential for a merger of surviving firms. This potential market churning has the potential outcome of substantially higher costs being borne by the ratepayers as the survivors try and recoup.

On the other hand, the firms may tacitly decide to compete for market share primarily in the areas where the market is expanding and settle for a split of the overall MTS market similar to what has been achieved at the interstate level. In the interstate market, it appears the challenger has basically set its prices just under the umbrella of the incumbent firm, establishing a profitable coexistence. If this umbrella pricing behavior remains a feature in the market and presuming one firm is more efficient than the other, the more efficient firm captures part of the monopoly profits and distributes them to shareholders. Meanwhile, the ratepayers do not share in the benefits of the so-called competitive marketplace.

Thus, the Commission is faced with attempting to design a market structure that steers a narrow path between oligopoly, ruinous competition, and the development of a healthy competitive market. For the market to have sufficient numbers of service providers to stimulate and maintain competitive behavior aimed at keeping prices near cost, an attractive wholesale rate is critical to allow for a resale market niche to develop. At the onset, the Commission would be prudent to closely monitor the relationship between the wholesale rate of Alascom and the wholesale contracts that may emerge on the nondominant side. If a resale market is slow to develop, the Commission should explore requiring all facilities-based firms to file a wholesale tariff for approval based on an appropriate marginal cost methodology. This could be one avenue of encouraging a market and implementing the statutory requirement that "a telephone company may not prohibit or restrict the resale of telecommunications service." It is interesting to note in an annual report of the Council of Economic Advisors to President Reagan that the sale of the underlying transmission capacity at an appropriate marginal cost is a suggested method of "deregulating" and assisting the development of competitive markets.

Particularly in markets as thin as Alaska, it makes sense to sell capacity at marginal costs rather than building additional excess capacity in a system. GCI indicated one of the benefits of building its network was redundancy. A question the Commission has to ask itself is what level of redundancy is appropriate and who is going to pay for it. Currently, GCI is authorized to build duplicate facilities in communities with as few as 20 channels and less than 500 access lines. To allow any further duplication of facilities without examining the full potential for the resale of underlying transmission capacity seems less than cautious.

Over the next few years a number of new facilities will be deployed by both Alascom and GCI. They will both have ample opportunity to demonstrate their abilities, technical and otherwise, in close proximity to one another. Based on this close comparison the Commission will be better positioned to determine what additional refinements to the market structure are required to stimulate competitive forces and limit market failures.

DATED at Anchorage, Alaska, this 6th day of September, 1990.

Mark A. Foster
Commissioner

APPENDIX "A"

3 AAC 52 is amended by adding new sections to read:

[Publisher: Please add the following sections to 3 AAC 52 as Article 4, renumber existing Articles 4 (Electric Utilities), 5 (Criteria for Determination of Power . . .), and 6 (Cable Television Joint Use . . .) to become Articles 5, 6, and 7, respectively, and make these changes to the Article list for 3 AAC 52.]

ARTICLE 4.

CRITERIA FOR INTRASTATE INTEREXCHANGE TELEPHONE COMPETITION

Section

3 AAC 52.350. APPLICABILITY, FINDING, PURPOSE, AND WAIVER. (a) The provisions of 3 AAC 52.350 — 3 AAC 52.399 apply to all interexchange carriers that furnish intrastate interexchange telephone service within the State of Alaska.

(b) The commission finds that the competitive provision of intrastate interexchange telephone service in accordance with the provisions of 3 AAC 52.350 — 3 AAC 52.399 is required by the public convenience and necessity.

(c) The purpose of 3 AAC 52.350 — 3 AAC 52.399 is to allow competition in the provision of intrastate interexchange telephone service to the extent possible while maintaining and promoting universal intrastate interexchange telephone service at geographically averaged rates.

(d) Notwithstanding (a) — (c) of this section, 3 AAC 52.350(b) and 3 AAC 52.360 do not apply to an interexchange carrier that is also a local exchange carrier. A local exchange carrier may file an application to provide intrastate interexchange telephone service under 3 AAC 48.600 — 3 AAC 48.660.

(e) For good cause shown, the commission will, in its discretion, waive all or any portion of 3 AAC 52.350 — 3 AAC 52.399 for an interexchange carrier and establish appropriate criteria for that carrier. (Eff. _/_/_, Register _)

Authority:	AS 42.05.141(b)	AS 42.05.381
	AS 42.05.151(a)	AS 42.05.401
	AS 42.05.221	AS 42.05.711(d)
	AS 42.05.241	AS 42.05.720(4)(B)
	AS 42.05.311	AS 42.05.800
	AS 42.05.321	AS 42.05.810
	AS 42.05.361	AS 42.05.860
	AS 42.05.371	AS 42.05.995

3 AAC 52.355. SCOPE OF COMPETITION. (a) The extent to which interexchange carriers may construct facilities for use in the origination and termination of intrastate interexchange telephone service is specified as follows:

(1) All interexchange carriers are permitted to construct facilities and use those facilities in the provision of intrastate interexchange telephone service in the locations of Adak, Anchorage, Barrow, Bethel, Chugiak, Cordova, Deadhorse, Delta Junction, Dillingham, Eagle River, Eielson Air Force Base, Fairbanks, Ft. Greeley, Ft. Wainwright, Glennallen, Haines, Healy, Homer, Juneau, Kenai, Ketchikan, King Salmon, Kodiak, Kotzebue, Nome, North Pole, Palmer, Petersburg, Seward, Sitka, Soldotna, Talkeetna, Unalaska, Valdez, Wasilla, Willow, and Wrangell. A location served by a remote unit from one of the foregoing locations at the

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ffective date of (a)(1) of section is also onsidered a part of that location.

(2) Only the incumbent carrier is permitted › construct facilities and use those facilities in ıe provision of intrastate interexchange tele-hone service in a location not listed in (1) of ıis subsection.

(3) Notwithstanding (1) and (2) of this sub-ection, the commission will, in its discretion, eclassify any location in the state based on a etermination that traffic density and other rele-ant factors require reclassification.

(b) Retail competition in the provision of ıtrastate interexchange telephone service, ırough resale of services from another carrier uthorized to provide intrastate interexchange elephone service, is permitted throughout the tate, regardless of whether traffic originates or erminates in a location where the construction nd use of facilities is limited to the incumbent arrier. (Eff _/_/_, Register _)

uthority:	AS 42.05.141(b)	AS 42.05.381
	AS 42.05.151(a)	AS 42.05.401
	AS 42.05.221	AS 42.05.711(d)
	AS 42.05.241	AS 42.05.720(4)(B)
	AS 42.05.311	AS 42.05.800
	AS 42.05.321	AS 42.05.810
	AS 42.05.361	AS 42.05.860
	AS 42.05.371	AS 42.05.995

AAC 52.360. CERTIFICATES OF PUBLIC 'ONVENIENCE AND NECESSITY. (a) An ntity proposing to provide intrastate interex-hange telephone service must file an applica-on for a certificate of public convenience and ecessity that includes

(1) the legal name and the name under which the applicant proposes to do business;

(2) the address of the principal national and Alaskan place of business;

(3) the name, title, and telephone num-ber of the individual who is the liaison with the commission in regard to the application;

(4) applicant's business structure (cor-poration, partnership, etc.), including proof of incorporation and name and address of regis-tered agent if applicable;

(5) proof of authority to do business in Alaska;

(6) a list of the owners of 5 percent or more of the applicant's equity;

(7) a list of persons or entities that are affiliated interests of the applicant;

(8) a list of all administrative and judi-cial proceedings that resulted in

(A) suspension, revocation, or denial of the authority, license, or certification of the applicant or its officers, directors, or affiliates to provide utility services;

(B) a reprimand, penalty, or convic-tion of applicant or its officers, directors, or affiliates related to operations, gross mis-representations, fraudulent transactions, or securities violations; or

(C) an adjudication of bankruptcy or a reorganization in bankruptcy of applicant or its officers, directors, or affiliates;

(9) a list of all cases and locations in which the applicant, its officers, directors, or affiliates, has abandoned service in violation of applicable statutes, regulations, or orders;

(10) a list of the names, titles, and responsibilities of key management now employed or to be employed by the applicant and resumes for each person;

(11) for existing businesses, copies of the most recent year's balance sheet and income statement or Federal Communica-tions Commission Form M and, if available, Securities and Exchange Commission Form 10-K;

(12) for new businesses, copies of the most recent year's balance sheet and income statement for the principal owners of the business;

(13) a list of all services proposed, together with an explanation of the applicant's technical ability to provide the proposed services;

(14) a list of all locations proposed to be served on an originating basis;

(15) a list of all locations proposed to be served on a terminating basis;

(16) a description of all existing facili-ties that will be used to provide intrastate interexchange telephone service;

(17) a description of all agreements or

negotiations with other utilities for joint use and interconnection of facilities;

(18) a description of all facilities planned for construction within five years to provide intrastate interexchange telephone service;

(19) a description of all existing facilities, or facilities planned for construction within five years, that are or will be used to provide interstate interexchange service;

(20) a tariff of rates and services; and

(21) a signed verification that all of the information provided in the application is true, accurate, and complete.

(b) An application for a certificate of public convenience and necessity to provide intrastate interexchange telephone service will be noticed in accordance with 3 AAC 48.645(a).

(c) An entity proposing to provide intrastate interexchange telephone service and any authorized nondominant carrier must also file, at least six months before any construction or installation begins, plans for all facilities that will be used to provide interstate interexchange telephone service in locations where only the incumbent carrier is permitted to construct facilities for the provision of intrastate interexchange telephone service, along with data demonstrating that the facilities are cost effective and fully justified on the basis of the proposed interstate interexchange telephone service alone. An entity proposing to provide intrastate interexchange telephone service or an authorized nondominant carrier that constructs or installs facilities to provide interstate interexchange telephone service without providing that information and justification will be denied, permanently, a certificate of public convenience and necessity to provide facilities-based intrastate interexchange telephone service to the location where facilities for interstate interexchange telephone service were installed, even if the location is subsequently classified as a location where all interexchange carriers are permitted to construct facilities.

(d) Except as provided in (c) of this section, a certificate of public convenience and necessity will be issued, within 90 days of the date of filing a complete application, to an entity that proposes to provide intrastate interexchange telephone service under 3 AAC 52.350 — 3 AAC 52.399 and that is found by the commission to be fit, willing, and able to provide the proposed service.

(e) The commission will, in its discretion, place conditions on a certificate of public convenience and necessity, as appropriate, including a condition that the interexchange carrier post a bond to assure compliance with commission rules and payment of access charges. (Eff. _/_/_, Register _)

Authority:	AS 42.05.141(b)	AS 42.05.381
	AS 42.05.151(a)	AS 42.05.401
	AS 42.05.221	AS 42.05.711(d)
	AS 42.05.241	AS 42.05.720(4)(B)
	AS 42.05.311	AS 42.05.800
	AS 42.05.321	AS 42.05.810
	AS 42.05.361	AS 42.05.860
	AS 42.05.371	AS 42.05.995

3 AAC 52.363 DETERMINATION OF DOMINANT STATUS. (a) Upon petition or on its own motion, the commission will, in its discretion, determine whether an interexchange carrier has market power and, as appropriate, designate or change the designation of the interexchange carrier as dominant or nondominant.

(b) Until changed under (a) of this section, the incumbent carrier is a dominant carrier; and all other interexchange carriers are nondominant carriers.

Authority:	AS 42.05.141(b)	AS 42.05.711(d)
	AS 42.05.151(a)	AS 42.05.720(4)(B)
	AS 42.05.221	AS 42.05.800
	AS 42.05.241	AS 42.05.810
	AS 42.05.261	AS 42.05.860
	AS 42.05.271	AS 42.05.995

3 AAC 52.365. DISCONTINUANCE, SUSPENSION, OR ABANDONMENT OF SERVICE BY NONDOMINANT CARRIER (a) A nondominant carrier may discontinue, suspend, or abandon intrastate, interexchange telephone service at the end of the 30-day notice period required by (b) of this section

unless the commission finds that continuance of the service is required for the public convenience and necessity.

(b) A nondominant carrier proposing to discontinue, suspend, or abandon intrastate, interexchange telephone service must provide at least 30 days' notice to the commission, to its subscribers, and to every other interexchange carrier providing service to locations where the discontinuance, suspension, or abandonment is proposed. (Eff. _/_/_, Register _)

Authority:	AS 42.05.141(b)	AS 42.05.711(d)
	AS 42.05.151(a)	AS 42.05.720(4)(B)
	AS 42.05.221	AS 42.05.800
	AS 42.05.241	AS 42.05.810
	AS 42.05.261	AS 42.05.860
	AS 42.05.271	AS 42.05.995

3 AAC 52.370. RETAIL RATES. (a) The retail rates for message telephone service of each interexchange carrier must be geographically averaged. The rates for message telephone service of each interexchange carrier must be structured with the same time-of-day rating periods and the same mileage bands used in the approved tariff of the incumbent carrier. The rate for each mileage band must be equal to or greater than the rate for the next shorter band. Discounts, if offered, must be available to all locations in the state where the interexchange carrier offers service.

(b) A nondominant carrier may modify retail rates and implement special contracts for retail services without approval of the commission. A modification of retail rates must be consistent with (a) of this section. A nondominant carrier must maintain a current tariff and all special contracts on file with the commission and must submit a filing in accordance with 3 AAC 48.220 and 3 AAC 48.270 at least 30 days before the effective date of a tariff change or special contract.

(c) The dominant carrier is authorized to reduce retail rates, to offer new or repackaged services, and to implement special contracts for retail services without approval of the commission. A rate reduction, new service, or repackaged service must be consistent with (a) of this section. The dominant carrier must maintain a current tariff and all special contracts on file with the commission and must submit a filing in accordance with 3 AAC 48.220 and 3 AAC 48.270 at least 30 days before the effective date of a special contract or a tariff change reducing retail rates or offering new or repackaged services. A tariff revision by the dominant carrier to increase a rate is subject to the provisions of 3 AAC 48.200 — 3 AAC 48.430.

(d) Notwithstanding (b) or (c) of this section, the commission will disapprove and require modification of rates that are not just and reasonable or that grant an unreasonable preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage. (Eff. _/_/_, Register _)

Authority:	AS 42.05.141(b)	AS 42.05.381
	AS 42.05.151(a)	AS 42.05.401
	AS 42.05.221	AS 42.05.431
	AS 42.05.241	AS 42.05.711(d)
	AS 42.05.311	AS 42.05.720(4)(B)
	AS 42.05.321	AS 42.05.800
	AS 42.05.361	AS 42.05.810
	AS 42.05.371	AS 42.05.860
		AS 42.05.995

3 AAC 52.375. WHOLESALE SERVICE AND RATES. (a) An interexchange carrier must offer all of its services for resale by other carriers.

(b) The rates of a dominant carrier for all wholesale services offered primarily or exclusively for resale by another carrier, including wholesale rates provided under special contract, are subject to the provisions of 3 AAC 48.200 — 3 ACC 48.430.

(c) A nondominant carrier may modify wholesale rates without approval of the commission. A nondominant carrier must maintain a current tariff on file with the commission and must submit a filing in accordance with 3 AAC 48.220 and 3 AAC 48.270 at least 30 days before the effective date of a tariff change.

(d) Notwithstanding (c) of this section, the commission will disapprove and require modification of wholesale rates of a nondominant carrier that are not just and reasonable or that grant an unreasonable preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage.

(e) The wholesale rates for services for resale are not required to be averaged geographically. (Eff. _/_/_, Register _)

Authority:	AS 42.05.141(b)	AS 42.05.381
	AS 42.05.151(a)	AS 42.05.401
	AS 42.05.221	AS 42.05.431
	AS 42.05.241	AS 42.05.711(d)
	AS 42.05.311	AS 42.05.720(4)(B)
	AS 42.05.321	AS 42.05.800
	AS 42.05.361	AS 42.05.810
	AS 42.05.371	AS 42.05.860
		AS 42.05.995

3 AAC 52.380. REPORTING, VERIFICATION, AND AUDITING REQUIREMENTS. (a) An interexchange carrier shall submit data necessary for the calculation of access charges in accordance with 3 AAC 48.440, the Alaska Intrastate Interexchange Access Charge Manual, and the effective access charge tariff, including, not less than 10 days after the end of each calendar month, the following data for the preceding calendar month:

(1) access minutes sold at retail (including switched access minutes on private lines) by mileage band, time of day, and high density or low density status, as defined in the Alaska Intrastate Interexchange Access Charge Manual;

(2) nonswitched private lines sold at retail, including originating and terminating locations of each private line;

(3) access minutes sold for resale (including switched access minutes on private lines), by purchaser, mileage band, time of day, and high density or low density status;

(4) nonswitched private lines sold for resale, by purchaser and originating and terminating location;

(5) access minutes purchased for resale (including switched access minutes on private lines), by seller, mileage band, time of day, and high density or low density status; and

(6) nonswitched private lines purchased for resale, by seller and originating and terminating location.

(b) An interexchange carrier shall retain for a period of three years the records, including billing tapes, from which the data specified in (a) of this section is obtained.

(c) All information submitted by an interexchange carrier under (a) of this section is available for public inspection.

(d) An interexchange carrier may petition the commission to authorize an independent audit of the information provided by another interexchange carrier under (a) of this section. The interexchange carrier requesting an audit shall pay for the cost of the audit. If the commission determines based on the audit that the information provided by the audited interexchange carrier is inaccurate by a margin exceeding 2 percent or by a margin that resulted in an underpayment of access charges by an amount exceeding $200,000 on an annual basis, the audited interexchange carrier shall reimburse the cost of the audit and shall be subject to civil penalties in accordance with AS 42.05.571 — 42.05.621. In addition to the foregoing, an interexchange carrier that is determined to have underpaid access charges is required to correct that underpayment in accordance with the tariff of the Alaska Exchange Carriers Association. (Eff._/_/_, Register _)

Authority:	AS 42.05.141(b)	AS 42.05.401
	AS 42.05.151(a)	AS 42.05.431
	AS 42.05.221	AS 42.05.720(4)(B)
	AS 42.05.241	AS 42.05.800
	AS 42.05.311	AS 42.05.810
	AS 42.05.321	AS 42.05.830)
	AS 42.05.361	AS 42.05.850
	AS 42.05.371	AS 42.05.860
	AS 42.05.381	AS 42.05.995

3 AAC 52.385. STANDARDS OF SERVICE. (a) The applicability of 3 AAC 52.200 — 3 AAC 52.340 to nondominant carriers is waived.

(b) Traffic initially routed over the facilities of one interexchange carrier that is blocked due to busy circuits may not be automatically rerouted to the facilities of another interexchange carrier without the written agreement of the other carrier. (Eff. _/_/_, Register _)

Authority:	AS 42.05.141(b)	AS 42.05.381
	AS 42.05.151(a)	AS 42.05.401
	AS 42.05.221	AS 42.05.431
	AS 42.05.241	AS 42.05.711(d)
	AS 42.05.311	AS 42.05.720(4)(B)
	AS 42.05.321	AS 42.05.800
	AS 42.05.361	AS 42.05.810
	AS 42.05.371	AS 42.05.860
		AS 42.05.995

3 AAC 52.390. MISCELLANEOUS. (a) The applicability of 3 AAC 48.230, 3 AAC 48.275, 3 AAC 48.277, and 3 AAC 48.430 to nondominant carriers is waived.

(b) The applicability of 3 AAC 48.275(a) to the dominant carrier is waived for rate decreases, new services, and repackaging of existing services.

(c) A dominant carrier is responsible for providing intrastate interexchange telephone service as the carrier of last resort.

(d) A message telephone service subscriber of an interexchange carrier may not be transferred to another interexchange carrier unless the subscriber signs a written request for the change.

(e) No implicit modification or waiver of any statutory or regulatory requirements is intended by 3 AAC 52.350 — 3 AAC 52.399 for either dominant or nondominant carriers; absent specific modification or waiver, all statutory and regulatory requirements remain in effect for both dominant and nondominant carriers. (Eff. _/_/_, Register _)

Authority:	AS 42.05.141(b)	AS 42.05.371
	AS 42.05.151(a)	AS 42.05.381
	AS 42.05.221	AS 42.05.401
	AS 42.05.241	AS 42.05.411
	AS 42.05.311	AS 42.05.431
	AS 42.05.321	AS 42.05.451
	AS 42.05.361	AS 42.05.711(d)
		AS 42.05.720(4)(B)

3 AAC 52.399. DEFINITIONS. Unless the context indicates otherwise, in 3 AAC 52.350 — 3 AAC 52.399

(1) "commission" means the Alaska Public Utilities Commission;

(2) "dominant carrier" means any interexchange carrier determined by the commission to have market power;

(3) "geographically averaged rates" means rates that use the same tariff provisions and rate schedules to apply to all message telephone service communications of the same distance, regardless of the originating and terminating points of the communication;

(4) "incumbent carrier" means the telephone utility, or its successor, certificated in commission Docket U-69-24 to provide intrastate, interexchange telephone service;

(5) "interexchange carrier" means a carrier certificated by the commission to provide intrastate interexchange telephone service;

(6) "local exchange carrier" means any carrier certificated to provide local exchange telephone service;

(7) "nondominant carrier" means any interexchange carrier other than a dominant carrier.(Eff. _/_/_, Register _)

Authority:	AS 42.05.141(b)
	AS 42.05.151(a)
	AS 42.05.720(4)(B)
	AS 42.05.995

PROPOSED AMENDMENTS TO THE ALASKA INTRASTATE INTEREXCHANGE ACCESS CHARGE MANUAL

Section 003 should be amended by adding a subsection (g), to read:

(g) The Association tariff must include weights to be applied to each interexchange carrier's access minutes.

Section 105(c) should be amended to read:

(c) "Proportionate market share" shall be *based on each interexchange carrier's weighted access minutes for the month, determined as follows:*

(1) the access minutes of each interexchange carrier shall be weighted based on the weights in the Association tariff;

(2) once weighted, each interexchange carrier's weighted access minutes in all categories and mileage bands are summed, and the individual summations for all interexchange carriers are totaled; and

(3) each interexchange carrier's summed weighted access minutes is divided by the totaled weighted access minutes for all interexchange carriers [DETERMINED BY DIVIDING EACH INTEREXCHANGE CARRIER'S ACCESS MINUTES FOR THE MONTH BY TOTAL ACCESS MINUTES FOR ALL INTEREXCHANGE CARRIERS FOR THAT MONTH].

Section 105 should be amended by adding a subsection (e), to read:

(e) In the determination of proportionate market share under (c) of this section, each interexchange carrier's access minutes will include the following surrogate access minutes:

(1) for nonswitched private lines, 1000 minutes per month per voice-equivalent private line circuit; and

(2) for nonswitched T-1 private lines of 24 voice-equivalent channels, 500 minutes per month per voice equivalent channel.

Section 200 should be added, to read as follows:

200. DETERMINATION OF WEIGHTS. For the purpose of determining proportionate market share, access minutes shall be weighted based on

(1) calling distance;

(2) time of day; and

(3) high density or low density status.

The applicable weights shall be determined either in conjunction with the annual access charge tariff filing or in a separate proceeding convened for that purpose.

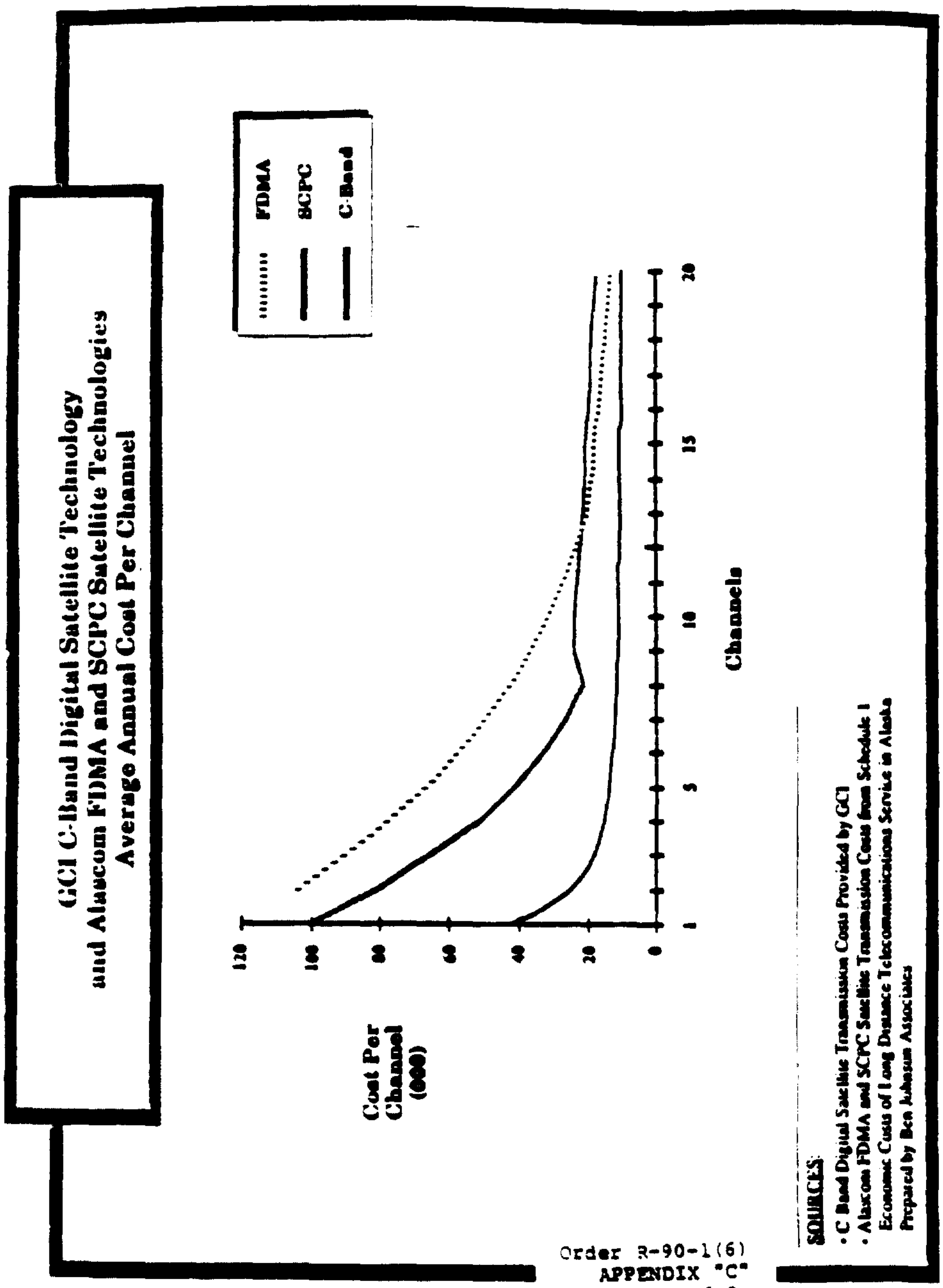
Section 800 should be amended to add the following definitions:

"high density locations" means Anchorage, Chugiak, Eagle River, Fairbanks, Homer, Juneau, Kenai, North Pole, Palmer, Seward, Soldotna, Wasilla, and Willow;

"high density minutes" means actual or surrogate minutes that both originate and terminate in locations defined as high density;

"low density minutes" means actual or surrogate access minutes that either originate or terminate in a location that is not defined as high density.

In these amendments, italics shows words being added. Words typed in capital letters and enclosed in brackets are being deleted from the current version of the Manual.



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APPENDIX "C"
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